

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on Regulations)
Relating to Passenger Carriers, Ridesharing,)
and New Online-Enabled Transportation)
Services.)
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Rulemaking 12-12-011

**COMMENTS OF THE ASSOCIATION OF CALIFORNIA INSURANCE COMPANIES
ON
DECISION MODIFYING DECISION 13-09-045**

Date: June 30, 2014

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The Property Casualty Insurers Association of America (PCI) is a national property casualty trade association that does business in California as the Association of California Insurance Companies (ACIC). PCI is composed of more than 1,000 member companies, representing the broadest cross-section of insurers of any national trade association. In California, PCI members include 391 property/casualty insurance companies and write 42.3 percent of the property/casualty insurance in California, including 50.7 percent of personal auto insurance, 50.5 percent of commercial automobile insurance, 37.9 percent of homeowners insurance, 38.2 percent of business insurance and 43.6 percent of the private workers compensation insurance.

At the outset, ACIC submits that PCI's insurance company members support innovation, but maintain that such innovation must be "responsible innovation," and must not compromise the safety of the public. ACIC is generally pleased with the CPUC's proposed modification of 13-09-045 as it attempts to provide a comprehensive approach in addressing the insurance gaps associated with the TNC business model. ACIC appreciates the opportunity to provide comments as discussed below:

I. Definition of Transportation Network Services (Proposed Decision 1-2)

It is imperative that the definition of transportation network services include "whenever the TNC driver has the application open." When the "app is on" the driver's behavior and the use of the personal vehicle fundamentally shifts from "personal" to "commercial." From that point, the TNC driver conveys to potential customers that he or she is available for business, drives a little faster to the destination of potential customers, increases the likelihood of

distracted driving which includes constantly looking at the “app” for potential customers, and travels to places that may be more risker like a “beer fest.” Excluding “app on” as part of the definition of TNC services would allow the TNCs to deny coverage for that period, which would lead to more litigation. The PUC has the opportunity to clarify the definition of TNC services and ensure the safety of the public by including “app on” as part of the definition of TNC services. To further clarify the definition, we suggest the CPUC add the following underlined language: *After the passenger exits the private passenger vehicle, transportation network company services returns to Period One.*

II. Comprehensive Coverage (Proposed Decision 3)

Sound public policy dictates that there should be ample protection for everybody when a TNC operates in California. In ACIC’s view, providing coverage for commercial liability, medical payments, comprehensive and collision, and uninsured/underinsured helps protect the driver, passenger, and the public. Thus, we urge the CPUC to maintain this proposed decision.

III. Insurance Product Flexibility and Innovation (Proposed Decision 5)

Consistent with our views to supporting “innovation,” we support the language in proposed decision number five. We believe that TNC driver data will be forthcoming, which would allow insurers to develop a policy for the TNC driver to specifically cover TNC services.

IV. Excess and Duty to Defend (Proposed Decision 6)

Addressing the insurance gap within the TNC business model includes consideration of other consequences that may occur, such as what happens when damages or injuries exceed the

TNC driver's policy limits, or when such policy ceases to exist, or who will defend the TNC driver in a lawsuit. In our view, the proposed language in proposed decision number six attempts to address those issues. However, we believe more clarification is needed. For example, the CPUC may wish to include the following underlined language: "In the event such driver maintained policy cease to exist at any time, including but not limited to lapses, denial of claims, and cancellations...." Such language will help clarify what it means when a policy ceases to exist.

V. Personal Insurance Firewall (Proposed Decision 7)

It has been our long held position that a personal auto insurance is inappropriate coverage for the commercial activities of the TNC driver. From an insurance perspective, allowing personal auto insurance to cover commercial activities will essentially lead to personal drivers subsidizing TNC drivers, which could unfairly raise the rates for personal drivers. Thus, we unequivocally support proposed decision seven.

VI. Duty to Indemnify

The duty to indemnify or the promise to reimburse for a loss must also be specified in proposed decision six and seven. While these proposed decisions attempt to clarify who defends, there must also be clarity regarding who pays if there is a loss. Therefore, it must be specified that the TNC must pay or reimburse for any loss when the TNC driver's policy ceases to exist and pay or reimburse for any loss incurred when a driver is providing TNC services, respectively for proposed decision six and seven.

VII. Notification of Personal Auto Insurers and Claims Cooperation

One of the goals in providing seamless operation of TNCs is to ensure that there is clear communication between the TNCs and insurers. TNCs should be required to notify their drivers' personal auto insurers of their status as TNC drivers prior to undertaking TNC services. Such information will provide early clarification that the TNC or a policy specifically designed to cover TNC activities will assume insurance coverage when TNC services are provided. Also, because accidents are inevitable, ACIC recommends the underlined language to ensure cooperation among parties: *In a claims coverage investigation during Periods 1, 2, and 3, a transportation network company or its insurer shall cooperate with insurers who are involved in the claims coverage investigation to facilitate exchange of information, which includes the provision of dates and times during which an accident occurred that involved the participating driver.*

In closing, while we support innovation, it should not come at the expense of the public's safety. We, therefore, urge the CPUC to adopt the proposed decision and our suggested amendments. ACIC appreciates your consideration of these comments and looks forward to working with the CPUC on these issues. Should you have any questions, please do not hesitate to contact me directly at (916) 440-1117 or email at armand.feliciano@acicnet.org.

Date: June 30, 2014

Sincerely,



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